

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Amendment of Sections 74.1233(a)(1) and
73.871(c) of the Commission's Rules to
Protect Local Radio Service provided by
AM Fill-In Translators

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MB Docket No. _____
RM - _____

To: Office of the Secretary
Attn: The Commission

PETITION FOR RULE MAKING

This petition for rule making submitted by J&W Communications, LLC¹ ("Petitioner") seeks a modification of the FM translator rules, specifically as they pertain to Section 74.1204(a)(3) and Section 74.1204(f) of the Commission's rules. Specifically, AM fill-in translators should be allowed, should they be displaced by a full-service FM station, to work in conjunction with other secondary service (either translator or LPFM) broadcasters to make "sub-moves" to avoid the AM fill-in translator being forced from the airwaves. The fact that an AM station can lose its entire FM translator investment and the future use of the translator is counter to the Commission's stated AM revitalization, especially when a spectrum scenario exists to save it.

¹ J&W Communications, LLC is the licensee of WSMX-FM, Goshen, Alabama. Christopher W. Johnson, one of the members of J&W Communications, LLC, is the licensee of W231DE, Birmingham, AL and WAMI-AM, Opp, AL. He is also the president/director of the C. W. Johnson Educational Foundation Inc. The Foundation is the licensee of WPJN, channel 207A, Jemison, AL.

I. INTRODUCTION

1. In many markets, the FM spectrum has become so crowded that there are no non-reserved FM channels to which a displaced AM fill-in translator can relocate. LPFM facilities are, by definition, non-commercial and, therefore, allowed to operate in the reserved band. Assuming no other channels are available for the displaced AM fill-in translator, these translators should be allowed to displace LPFM facilities into the reserved band (assuming such spectrum space exists in the reserved band). This is what is referred to as a “sub-move”; the displacement of a LPFM to either a reserved or non-reserved channel to preserve the local FM service provided by an AM fill-in translator.

2. The Commission’s decision to allow AM stations to operate FM translators has had the desired effect: creating an economic lifeboat to many AM broadcasters struggling to compete in today’s ever-changing communications landscape. However, this lifeboat can be sunk because of displacement by a full-service FM facility. If no vacant non-reserved channels exist to which the AM fill-in translator can relocate, AM broadcasters should be allowed to take steps to preserve their FM translators, regardless of the anachronistic rules governing translators. As such, if one or more LPFMs can relocate to another channel (especially in the reserved band) to preserve the fill-in translator, then Commission rules should allow for that contingency. Currently these “sub-moves” (displacements of secondary services caused by the displacement of another secondary service) are not allowed, except to mutually-exclusive channels. Further, other translators that can move to other channels (either MX or non-MX) to create a channel for a displaced AM fill-in translator should be allowed. All efforts should be made to keep AM fill-in translators on the air. Sub-moves of other secondary services to non-MX channels should be

adopted by the Commission to preserve this newly vital service for many broadcasters, especially in an increasingly crowded FM spectrum.

II. RULE CHANGES REQUESTED

3. Petitioner requests that Sections 74.1233(a)(1) and 73.871(c) of the Commission's rules be amended to add the underlined portions:

§74.1233 Processing FM translator and booster station applications

(a) Applications for FM translator and booster stations are divided into two groups:

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. For FM translator stations, a major change is any change in frequency (output channel) except changes to first, second or third adjacent channels, or intermediate frequency channels, and any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area. The exception to this minor change rule is if a translator is being displaced by an AM fill-in translator that is itself being displaced by a full-service FM station, in which case that shall be considered a minor change.

§73.871 Amendment of LPFM broadcast station applications

(c) Only minor amendments to new and major change applications will be accepted after the close of the pertinent filing window, except as the result of the displacement of an AM fill-in translator by a full-service FM or any such sub-move.

III. PETITIONER'S HYPOTHETICAL PROCEEDING

4. In support of this Petition for Rule Making, Petitioner points to a hypothetical proceeding in which a distant full-service FM transmitter site relocation has created an area of alleged interference with an AM fill-in translator where none existed previously. To alleviate the full-service FM's concerns about co-channel interference with the translator, the Petitioner has explored the possibility of moving to a non-MX channel via displacement. However, the spectrum in the translator's market has no vacant channels in the non-reserved band.

5. However, a vacant channel exists in the reserved band. There is a LPFM construction permit that could make a non-MX move into the reserved band, thereby freeing up a channel to which the AM fill-in translator could relocate. This LPFM could move to the reserved band on this vacant channel, and the LPFM construction permit is fully spaced on this new channel. This move would allow the Petitioner's AM fill-in translator to continue operation on the non-reserved channel that is currently being occupied by the unconstructed LPFM. Such a move would not violate the LPFM's non-commercial mandate, and it would allow the AM station to maintain its FM service. Under current FCC rules, a move by an LPFM into the reserved band would be considered a major change, on which currently there is a ban. However, this move would be as the result of the displacement of an AM fill-in translator's displacement by a full-service FM.

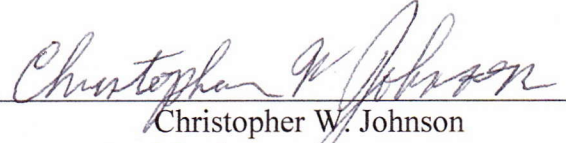
IV. CONCLUSION

6. The Commission has granted many AM broadcasters the ability to remain economically viable by allowing for use of FM translators. These translators are quickly becoming a vital part of the local service upon which the listening public depends. The Commission should allow for all modifications in the spectrum to be made among secondary services to allow for the preservation of AM fill-in translators, especially in cases where a

suitable non-reserved channel can be created only by the move of another secondary service (sub-moves). The definition of "minor change" applications should be amended for all secondary services to allow for the displacement of AM fill-in translators, so that this service can be maintained, and so that the economic viability of AM radio stations can be preserved.

Respectfully submitted,

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May 22, 2017